

In the United States  
**Circuit Court of Appeals**  
For the Ninth Circuit

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H. A. PIERCE,

*Appellant,*

vs.

ALBERT L. WAGNER,

*Appellee.*

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**APPELLANT'S BRIEF**

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Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Northern Division.

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**JURISDICTION**

This is an action for damages resulting from breach of duty by defendant, an attorney. There are two causes of action totalling \$3891.20. See amended complaint on page 14 of transcript. Plaintiff and his assignor are both residents of the City of Portland, Oregon and defendant is a resident of Sacramento, California. Defendant filed an alternative motion to

plaintiff's original complaint seeking dismissal of the action or a more definite statement of the two causes. The motion to dismsis was denied and the motion for a more definite statement was allowed. Thereupon the amended complaint was filed. To the amended complaint a motion to dismiss and motion for a more definite statement was filed. The motion to dismiss was thereupon allowed. This appeal is from the order dismissing plaintiff's case.

## STATUTORY PROVISIONS

The District Court had jurisdiction of the cause because of the diversity of citizenship of the parties and the amount in controversy exceeded \$3000. See 28 U.S.C.A. Sec. 41, (1) and (c). The Circuit Court of Appeals has jurisdiction as appellate court. See 28 U.S.C.A. Sec. 225 (a) First.

## SPECIFICATION OF ERRORS

### 1.

The District Court erred in dismissing the amended complaint and case.

## AUTHORITIES

Rule 8 (a) (2) and rule 8 (e) (1) of the Rules of Civil Procedure.

## STATEMENT OF THE CASE

Rule 8 (a) (2) of the Rules of Civil Procedure states:

“A pleading which sets forth a claim for relief . . . shall contain (2) a short and plain statement of the claim showing that the pleader is entitled to relief.”

Rule 8 (e) (1) says:

“Each averment of a pleading shall be simple, concise, and direct. . . .”

Pursuant to these rules Appellant filed his complaint appearing on page 2 of the transcript. Appellee filed a motion to dismiss the complaint or for a more definite statement. The District Court denied the motion to dismiss and allowed the motion for a more definite statement. Thereupon appellant filed an amended complaint comprising pages 14 to 25 of the transcript of record. Then appellee filed another motion to dismiss or for a more definite statement. The motion to dismiss was allowed by order of the District Court on September 21, 1942.

There is only one question in this case and that is whether the amended complaint complies with the jurisdictional requirements and sets forth a good claim pursuant to the rules of Civil Procedure. Paragraphs I and II of the amended complaint appearing on page 14 of the transcript of record set forth the diversity of citizenship and the general allegation that the amount in issue exceeds the sum of \$3,000. Thereupon the com-

plaint alleges the agreement upon which the transaction is based (See paragraph X, commencing on page 16 of the transcript). In Paragraph XI commencing on page 17 of the transcript the breaches and negligence of Appellee are set forth.

Thereupon in the remaining paragraphs appellant specifies the amount of damages by way of expenses, loss of time and loss of fees that were suffered on the first cause. These could not be pleaded in greater detail without pleading the detailed evidence and law.

The amount sought on the first cause of action totals \$2,920.80, besides interest and costs. In the second cause of action appellant seeks to recover \$970.40, making altogether \$3,891.20 plus interest and costs that are placed at issue by the complaint.

The specific items and damages claimed by appellant can and did flow from the wrongful and negligent conduct of appellee. The pleading and the allegations therein speak for themselves. They are clear and unequivocal. Unnecessary authorities or argument cannot enlighten the Court better than the plain words appearing upon the amended complaint and we submit the issue to the Appellate Court upon the plain words of the amended complaint

Respectfully,

REUBEN G. LENSKE,

Attorney for Appellant.